

REPORT FROM AN ORAL HEARING HELD AT GREEN FARM HOTEL, THORPE MARKET ON 4 JANUARY 2010 IN CONNECTION WITH AN APPEAL AGAINST NORFOLK PCT'S DECISION TO REFUSE HOLT HEALTH SERVICES LTD'S APPLICATION FOR PRELIMINARY CONSENT PRIOR TO INCLUSION IN THE PHARMACEUTICAL LIST AT HOLT MEDICAL PRACTICE, KELLING HOSPITAL SITE, OLD CROMER ROAD, HOLT
REF: SHA/15299

1 Background

- 1.1 By application dated 4 September 2008, Holt Health Services Ltd ("the Applicant") applied to Norfolk Primary Care Trust ("the PCT") for preliminary consent prior to inclusion in the pharmaceutical list at Holt Medical Practice, Kelling Hospital Site, Old Cromer Road, Holt, Norfolk. The application and supporting appendices are contained in the paginated bundle between pages 1 and 15.
- 1.2 Following the receipt of representations and further information requested in response to a number of specific questions, the PCT considered and decided to refuse the application. The report which was considered by the Norfolk Pharmacy and Dispensing Committee is between pages 40 to 50 of the bundle, the decision letter is at page 51 and the full decision report is between pages 52 and 56. In essence, the Committee concluded, the proposed pharmacy lies in a reserved location, the prejudice test did not apply and it was not necessary or desirable to grant the application.
- 1.3 By letter dated 3 August 2009, the Applicant appealed against the decision. The full grounds are set out in a letter of 20 August 2009 which is between pages 60 and 100 of the bundle.

2 Preliminary Consideration

- 2.1 The Pharmacy Appeals Committee appointed by the Family Health Services Appeal Unit of the NHS Litigation Authority, ("the Committee") had before it the papers considered by the PCT, together with a plan of the area showing existing pharmacies and doctors' surgeries and the location of the proposed pharmacy. It also had before it the responses to the Authority's own statutory consultations.
- 2.2 On the basis of this information, the Committee considered it was necessary to hold an Oral Hearing before determining the appeal and requested the Oral Hearing Panel to recommend with reasons, the most appropriate neighbourhood for the proposed pharmacy and whether the application should be granted in order to satisfy the test in Regulation 12(1) of the NHS (Pharmaceutical Services) Regulations 2005 (as amended) ("the Regulations").
- 2.3 The Panel was appointed and sat at Green Farm Hotel, Thorpe Market, Norfolk on 4 January 2010. A list of those present is attached at Appendix 1. On the morning of the hearing, it conducted a site visit. Its findings are set out below. It collected practice leaflets from the Holt Medical Practice and the Boots branch in Holt. These are aside at Appendix 2. Prior to the hearing, an email from Mr. Morley to the Appeal Unit was circulated to the Panel and parties.

3 The Site Visit

- 3.1 The proposed pharmacy is to be at the Holt Medical Practice which is part of a low rise non acute hospital in spacious grounds surrounded by belts of trees. It is some distance from the vehicular entrance to the main complex and a sign at the turning refers to a housing association and social services working in partnership. There are in the vicinity some private houses. The surgery opening hours are given as 8am to 6.30pm Monday to Friday and 9 doctors are listed on the plate by the main door. This notice by the door also states it is the reception for the hospital.

- 3.2 Inside there is a large foyer and the current dispensary which is part of the medical practice is immediately to the right.
- 3.3 The High Kelling road sign lies on the old road out of Holt in the vicinity of Grove Lane but to the west of the sign to Holt Station. Up to this point on leaving Holt there are footpaths either side of the carriageway but the pavement continues on the north side only once past the school. The road runs through a small wooded area before it swings south and rejoins the A148 Holt bypass. There is no direct vehicular access onto the A148 from the hospital as the "old road" is stopped to through traffic by a turning head next to the post office. A typical Norfolk ornate "High Kelling" sign is situated on a triangle of green to the south of the main road. The houses appeared large and in wooded gardens and in the main lie off private cul de sacs mainly to the north of the main road. A post office/store and cafe lies to the north of the main road with a vehicular access into the hospital site. This shop sells most daily necessities plus some tourist items. A sign for Holt Rugby Football Club is on the main road and points to a narrow lane to the north. Taking its access from the main road but not visible from it, is All Saints' Church, High Kelling. There is also the Pineheath Care Home and Leisure Club. The number 4 bus run by Sanders runs through High Kelling and onto Holt but the Panel also noted a bus from a different company also providing services.
- 3.4 Holt lies to the west of the proposed site. The sign on the access road from the west of the town, describe it as a "Fine Georgian Town". Information boards in the town centre explain that in 1708 a Great Fire destroyed much of the town and it was rebuilt away from the Church and nearer the Market Place. There are therefore many buildings dating from this time. Development has been sympathetic and new shopping areas take their access off small alleys, forming attractive courtyards and walk ways. One such walk way lies between the Boots pharmacy in High Street and the Kings Head Public House. This leads into the Appleyard shopping area which in turn links into the large car park attached to the Budgen's supermarket which is the main food shop in the town centre. Parking here is 70 pence an hour refundable on a £5 spend at the supermarket.
- 3.5 The Boots pharmacy lies at the rear of the shop which sells a range of toiletries etc. There is no parking on street immediately outside but there are a few on street spaces nearby or in New Street opposite where parking is free although limited to 1 hour. There is also car parking at Albert Street where the cost of the first hour's parking is 20 pence but it rises steeply thereafter. The Station Park has £1 charge for 2 hours parking but it is also priced up to 10 hours.
- 3.6 Holt is an extremely attractive town with a significant number of local up-market independent shops. At the time of the site visit, the streets were busy and delivery vehicles unloading outside the shops in High Street created congestion.
- 3.7 On leaving the shopping centre of Holt on the Cromer Road there are houses for much of its length before reaching the senior building of Gresham School which extends over a considerable area. The pre-school entrance is next to St. Andrew's Church but the senior school buildings extend to the Holt sign.
- 3.8 A road sign at the junction of Cromer Road and the bypass in the vicinity of the hospital site gives the distance to Cromer as 10 miles. There are branches of Boots and Lloyds in Church Street there, in the main shopping area. A large Morrison's supermarket lies on the Holt side of Cromer. There are also branches of Boots and Lloyds in the main shopping street of Sheringham about 5 miles away.
- 3.9 The branch surgery of the Holt Medical Practice in Blakeney is in a small new unit in the centre of the village with its own dispensary.
- 3.10 The distance between the end of New Street and the Holt Medical Practice was measured by the car's odometer as 1.4 miles. It took a matter of minutes to drive.

The distance from Boots to the Holt sign was measured as 1 mile and to the High Kelling sign 1.2 miles.

4 The Hearing

Holt Health Services Ltd (Applicant/Appellant)

- 4.1 In addition to the matters referred to in the application, appeal, comments which can be found at pages 30, 31, 33 – 36, 109 to 114 of the bundle and the email sent to the Appeal Unit on 23 December 2009, Mr. Morley, Dr. Franklin and Mrs. Preston made the following points in oral evidence and in answer to questions.
- 4.2 Dr Peter Franklin and Dr. Henry Crawley are the two directors and shareholders in the applicant company.
- 4.3 In the email of 23 December 2009, it was fully accepted that the map submitted with the application was not helpful. It is thought that the foot print of High Kelling should be the neighbourhood with the railway line being the boundary. The neighbourhood is delineated on the map at Appendix 2. It could also be perceived that the catchment area of the practice could be the neighbourhood although that is an area of 100 square miles. It is thought however that in the past the Appeal Unit has not been sympathetic to that idea. It is not thought that the pharmacy would be in a neighbourhood which includes Holt as there is no medical centre there.
- 4.4 On pages 31, 34, 37, 69 and 70 of the bundle are references to neighbourhood made by Mr. Morley, the PCT and Boots. It can be seen therefore there is a weight of evidence that the neighbourhood should be High Kelling.
- 4.5 The surgery used to be in Holt and moved to the High Kelling site 6 years ago. Moss the pharmacy in Holt declined to move at that time. As at this morning the current list size is # patients of whom about # are dispensing patients. On page 42 the PCT has referred to there being # patients within 1.6 kms of Boots. There would then be a further # patients who would be within 1.6 kms of a pharmacy were the application to be granted.
- 4.6 It is quite clear that however the figures are viewed there are a significant number of patients who do not at present have access to pharmaceutical services. In addition there is a large tourist trade especially in the summer.
- 4.7 This is a preliminary consent application and it is not yet clear where exactly the pharmacy will be at the hospital site.
- 4.8 On page 54 is the summary of the PCT's decision and it appears to be a contradiction with the findings on the following page. Having found prejudice did not apply the PCT then appeared to find this was in fact the case. The PCT did not give sufficient weighting to choice, competition or access. On the spectrum of adequacy, the granting of the application is at least desirable and given the number of patients involved it could well be perceived as necessary.
- 4.9 The surgery is at present open from Monday to Friday 8am to 6.30pm. Two evenings a week it is open to 8pm alternating between Monday and Wednesday one week and the next week, Tuesday and Thursday. The pharmacy will stay open the same hours as the surgery. The proposed hours of the pharmacy have changed since the application was submitted. At that time it was not thought there would be a need for pharmaceutical services from 12.30 to 2.15pm. It may be that in the summer season, the pharmacy will also open at the weekend.
- 4.10 The directors would wish Mr. Morley to continue to provide mentoring to the superintendent pharmacist and advice on clinical issues even after the permanent superintendent pharmacist is appointed.

- 4.11 The practice will be advised that patients should have a choice of where the patients take their prescription. Acute patients will be handed a script and repeats will continue to be given to the nominated pharmacy.
- 4.12 It is likely that there will be a significant OTC trade as well as a large amount of dispensing. The proposed pharmacy will be a hybrid pharmacy and the pharmacist will oversee the doctor dispensing as well as the running of the pharmacy.
- 4.13 The GP directors have for at least 2 years thought their patients disenfranchised in terms of pharmaceutical services. The practice has been developing over the years and this is another service which it wishes to include. There have been limited approaches made to Boots
- 4.14 It is not intended to dwell on past complaints against the existing pharmacy. In the event of a second provider it is likely to ensure that Boots will improve standards. The dispensary manager has been in close touch with Boots about concerns and the response has been varied. The dispensary manager has contacted the PCT, Christine Walton on one occasion.
- 4.15 The practice has notified the PCT of the extended evening surgery hours and has not contacted Boots direct. A pharmacist on site would have access to group information and this would be helpful in providing shared care. The practice would also have the benefit of open feedback.
- 4.16 There are a total of 28 GP community beds at the hospital split between the Holt and Sheringham practices. A patient in one of those beds will receive prescribing from the Norwich Hospital doctors but the local GPs acting with their hospital hats on are responsible for their clinical care. There are also physiotherapy, occupational therapy and speech therapy services and a mental health facility for North Norfolk based at High Kelling Hospital. Across the back of the site are 40 units of sheltered accommodation for the more frail and elderly. Those residents receive medical services from Holt Medical Practice.
- 4.17 There are a significant number of cottages and holiday homes in the area which are occupied over an extended season. The practice has several thousand registrations for temporary residents per year. It would be the intention to inform all owners of hotels etc and police of the existence of the new pharmacy.
- 4.18 Patients of the Holt practice can choose which of the three surgeries they go to. There are probably about # patients in Blakeney and # in Melton Constable.
- 4.19 Gresham School has a mixture of day pupils and boarders and they get their medical services from the Sheringham practice.
- 4.20 It is accepted that the High Kelling site is not easy to access without transport and most people at present come by car.
- 4.21 No evidence has been put forward by Boots that they will close.

Norfolk PCT

- 4.22 In addition to the comments made in the PCT letter dated 18 September 2009 to the Appeal Unit, Mr. Reuben made the following additional points in oral evidence and in answer to questions.
- 4.23 For the avoidance of doubt, the PCT looked at the neighbourhood put forward in the application and had the definition now given been before the Committee it is possible a different decision may have been made.

- 4.24 The PCT looked at the risk of Boots closing in the event of becoming non viable and determined that this would have a serious detriment to Holt as a town. More weight however was put on the adequacy.

Boots PLC

- 4.25 In addition to the comments made in a letter of 23 December 2008 to the PCT between pages 23 and 27 of the bundle, further comments in a letter of 26 May 2009 to the PCT at pages 37 to 39 of the bundle, comments on the appeal in a letter dated 24 September 2009 to the Appeal Unit which are at pages 106 to 108, Mrs. Lockton and Mr. Cottee made the following points in oral evidence and in answer to questions.
- 4.26 The neighbourhood should be considered to be High Kelling and Holt and this is borne out by the aerial map. People who live in High Kelling have limited services and have to travel outside the area for all other services. If the Panel is minded to find High Kelling as a separate neighbourhood, it does not in any event, have to have a pharmacy in it, if there is a pharmacy in an adjoining neighbourhood.
- 4.27 It is accepted car parking is not easy in the narrow Georgian streets. But there are car parks at Budgens and Albert Street and a large one is proposed for long stay visitors on the edge of town.
- 4.28 Access by foot even for those living in High Kelling to the proposed pharmacy is not easy.
- 4.29 55% of the working population of Holt actually work in the town and may find it convenient to use the Boots pharmacy.
- 4.30 All the services as set out in the submission are offered. One dispenser has left and she was the assessor for the social services for the medicine support service.
- 4.31 There is a comprehensive free delivery service available on request. There are two dedicated delivery drivers undertaking about 50 deliveries a day.
- 4.32 The provision of any further services can be discussed with the PCT
- 4.33 Mr. Cottee has been in the Holt branch since October 2009. There are two pharmacists and 4 dispensers in the Holt branch. The two pharmacists do not overlap. The shop is DDA compliant and has a consultation room. It is on track to do the target number of MURs. The pharmacy is large and can meet any increase. Because of its location, over 78% of patients prefer to use the Holt pharmacy rather than travel to the surgery to collect scripts. The seasonal trade is welcomed but not critical to the viability of the business. It makes little difference to the dispensing figures although there may be an increase in the OTC trade. Tourists can find the shop easily in the centre of town. Were the Boots pharmacy to shut this would be serious for the high number of elderly people in Holt.
- 4.34 90% of scripts dispensed at the Boots branch in Holt come from the Holt Medical Practice and 78% of those are collected from the surgery.
- 4.35 Currently there are 12 patients who require daily methadone consumption.
- 4.36 The PCT did take choice into account. Boots is a national chain but the staff are local and understand the patients' needs. Competition would not result in anything being done differently.
- 4.37 High Kelling only has a small population of 585 and they have to travel outside the neighbourhood to access all services.

- 4.38 The Pineheath Nursing Home is serviced by Boots from the branch at Cromer.
- 4.39 The PCT and LPC have not received any written complaints and this is acknowledged in the report. Holt Town Council, High Kelling Parish Council and the LINK organisation have not supported the application.
- 4.40 Dispensing is below the national average if norms and quotas are considered. Boots opens 6 days a week. There is no lunchtime closing since Mr. Cottee joined the team.
- 4.41 Boots in Holt dispense and deliver to Gresham School.

Norfolk and Waveney LMC

- 4.42 In addition to the comments made in the LMC's letters of 31 December 2008, and 27 August 2009 which can be found at pages 28, 29, 101 to 103 of the bundle, Ms. Payne who was present had no points to make.

5 Consideration

- 5.1 The Panel was mindful of the test as set out in Regulation 12(1) and the matters to which it must have particular regard as set out in Regulation 12(2). It also had to assist it the Guidance issued by the Department of Health amended in September 2009.
- 5.2 The Panel was also aware that although a significant number of patients are eligible to receive dispensing from their doctors and there was no suggestion in the papers, that people were dissatisfied with this arrangement, Regulation 12(1) specifically requires the decision maker to look at the adequacy of pharmaceutical services "by persons included in a pharmaceutical list." The Panel therefore was obliged to ignore the reality of the current situation when reaching its recommendation.
- 5.3 The Panel considered the issue of neighbourhood. The neighbourhood originally suggested by the Applicant is shown on the map at page 13 of the bundle and although the scale is not large, it is sufficient to place the proposed premises in the same neighbourhood as Holt and separate from what appears to be the community of High Kelling. This was the area adopted by the PCT in its decision (see para 4.3 on page 53). At this oral hearing, however, the Applicant indicated High Kelling was the neighbourhood, the western boundary of which is the railway line. Mr. Morley gave an alternative neighbourhood as the practice area.
- 5.4 The Panel concluded the neighbourhood should not be the practice catchment area which is very large and includes very many communities. The Panel after a great deal of consideration recommend that the neighbourhood should be Holt and High Kelling. The Panel noted that Holt Railway Station lies to the east of the High Kelling road sign and the very narrow bank of woodland. To all intents and purposes there is coalescence. The Holt RFC and Holt Medical Practice are apparently in High Kelling and although there is a small post office/shop near the hospital site and All Saints' Church, for all other services it is necessary to travel to Holt or further afield. The Panel did not have a sufficiently detailed map before it to plot the boundaries of the neighbourhood and would therefore describe it as the built environment of Holt and High Kelling.
- 5.5 It was agreed the resident population of the neighbourhood is something in the region of 4,500. This however does not include either the boarders or day pupils at Gresham School. Nor does it include the very many thousands of visitors to the area. In addition there would be patients who would be accessing the surgery and hospital services from outwith the neighbourhood.

- 5.6 The neighbourhood appeared to be affluent and although from the papers it is suggested car ownership is lower than average, the Panel saw no evidence of this on its site visit. It did however note a relatively large amount of what seemed to be accommodation for older people which could account for the statistics.
- 5.7 Within the neighbourhood as defined, there is one pharmacy, that of Boots situated in the shopping centre of Holt. It provides the services at hours as set out at page 37 of the bundle. The Panel accepted therefore there is no choice of pharmaceutical provider within the defined neighbourhood but that is one factor to which it must have regard under the provisions of Regulation 12(2). Although the Applicant made reference to a number of issues in the past, it does not seem any formal complaints have been made or pursued and with Mr. Cottee now in post, the Panel had no reason to suppose the service provided from that pharmacy was anything other than satisfactory.
- 5.8 The Panel was satisfied Boots has developed a comprehensive collection and delivery service with two drivers employed and it is well used.
- 5.9 The Panel noted on its site visit, there were few, if any spaces available on the street for parking and the Station Road car park was almost full. The Panel members accepted that during busy times, parking generally could be a problem as evidenced by plans for a new long stay car park which it proposed should be opened on the fringes of Holt.
- 5.10 Turning to the application for the proposed pharmacy the Panel had concerns about the hours given in the pharmacy application in that it was envisaged it would open at 8.30am until 12.30pm and 2.15pm to 6.15pm. The Panel noted however that the surgery is open at 8am and remains open until 6.30pm and indeed now offers a surgery until 8pm 2 evenings a week. Furthermore, for those who are on site although not necessarily going to the surgery, and who wish to access pharmaceutical services, they would find those unavailable for nearly 2 hours in the middle of weekdays and all weekends. The proposed opening hours are not therefore as long as those offered by Boots. Mr. Morley did say that the proposed pharmacy would open longer hours but the Panel had nothing in writing to confirm this. The Panel therefore had to assess how much weight it could put on this oral evidence. Dr. Franklin one of the applicant company's directors was at the hearing and having given authority to Mr. Morley to speak on behalf of the company, the Panel considered it could rely on the assurance to open longer hours. If the Panel had thought otherwise, the members would have possibly taken a different view on the application.
- 5.11 The Panel also noted that the services proposed are already provided by Boots save for some enhanced services which may be required/commissioned in the future. Dr. Franklin explained that the planned pharmacy was to enhance services generally and a pharmacist with access to clinical records would be of assistance to patients. The surgery would also benefit from a pharmacist's input. The Panel did not consider that a pharmacy contract was necessary to secure such an input and a pharmacist could either be employed directly by the practice or closer liaison could take place with an existing contractor. The Panel members thought it extremely regrettable that for whatever reason close co-operation has not taken place between the pharmacy in Holt and the practice and even now, Boots has not been directly informed of the evening surgeries taking place. Such a lack of liaison between primary care providers can only be of detriment to patients.
- 5.12 The Panel noted that the Holt Medical Centre is sited in the middle of the practice area and there is open access to both the main surgery or either of the branch surgeries. The Panel noted that about # of the patients live in the communities of Blakeney and Melton Constable. It is possible therefore that in the region of # patients could be accessing the High Kelling site who at present may not have access to pharmaceutical services in the areas they live. Furthermore, the hospital

provides a range of services for those in North Norfolk. Furthermore, the Panel was told that several thousand visitors are registered as temporary residents each year. It is likely that the hospital site will primarily be accessed by those who are car borne. The Panel was of the view to expect those who wish to access pharmaceutical services to drive on to Holt (or for that matter to Cromer or Sheringham) with the possible difficulties in car parking is not satisfactory. For this reason, it could not be said the current pharmaceutical services are adequate.

- 5.13 The Panel accepted that there will be inevitably “drift” of some patients to any new pharmacy at the Holt Medical Centre. The Panel was assured by Mr. Morley that the doctors would not direct scripts. The Panel noted however he is acting on behalf of the applicant company and did not indicate he had the authority to speak on behalf of the doctors themselves. Whilst Boots in its written evidence made comments about its possible future viability, the Panel was presented with no hard evidence of this although Mrs. Lockton made a passing reference in oral evidence to the elderly residents of Holt being disadvantaged if Boots were to close. In the light of this, the Panel placed little weight on the Department of Health Guidance as set out in paragraphs 28 to 31 in which PCTs are advised to consider the likely impact the application would have on the provision of services in the neighbourhood in the longer term. The Panel was of the view any attempt to foresee what might or might not happen in the future would be speculation on its part.
- 5.14 Having taken all the evidence, both written and oral and its own observations on the site visit into account the Panel concluded that the current pharmaceutical services either in or to the neighbourhood of Holt incorporating High Kelling could not be said to be adequate and it is desirable to grant the application.

6 Recommendation

The Panel members unanimously recommend the neighbourhood should be the built environment of Holt and High Kelling and pharmaceutical services in or to the neighbourhood could not be said to be adequate. It is desirable to grant the application and the appeal should therefore be allowed.

J.E. Perrett (Chairman)

Appendix 1

ATTENDANCES

